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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

HUBB SYSTEMS, LLC) Case No. C07-02677 BZ
)
Plaintiff/Defendant-in-Counterclaim,) DEFENDANT MICRODATA GIS, INC.'S
) ANSWER TO PLAINTIFF'S COMPLAINT,
v.) AFFIRMATIVE DEFENSES,
) COUNTERCLAIMS, AND JURY DEMAND
MICRODATA GIS, INC.,)
)
Defendant/Plaintiff-in-Counterclaim.) Courtroom: G
) Magistrate Judge Bernard Zimmerman
)
)

Defendant microDATA GIS, Inc. ("microDATA") submits this Answer ("Answer") in response to Plaintiff Hubb Systems, LLC's ("Hubb's") Complaint against microDATA alleging trademark infringement, false designation of origin, cybersquatting, and unfair competition (the "Complaint") and denies any and all such allegations, and further admits or denies the specific allegations of the Complaint and states affirmative defenses and counterclaims, as follows:

JURISDICTION, VENUE AND PARTIES

1. microDATA admits the allegations of subject matter jurisdiction in paragraph 1.
2. microDATA admits the allegations of subject matter jurisdiction in paragraph 2,

1 assuming the validity of the allegations set forth as to Hubb's location and corporate status.

2 3. The allegations of paragraph 3 set forth a conclusion of law to which no response is
3 required from microDATA. To the extent that a response may be required, microDATA admits
4 that it attended the "Cal NENA" trade show but denies that it has made any sales of goods or
5 services in California and denies the allegations of personal jurisdiction.

6 4. The allegations of paragraph 4 are non-traversable.

7 5. Answering paragraph 5 of the Complaint, microDATA lacks information sufficient
8 to form a belief as to the facts alleged, and on that basis, denies them.

9 6. Answering paragraph 6 of the Complaint, microDATA lacks information sufficient
10 to form a belief as to the facts alleged, and on that basis, denies them.

11 7. Answering paragraph 7 of the Complaint, microDATA lacks information sufficient
12 to form a belief as to the facts alleged, and on that basis, denies them.

13 8. Answering the first sentence of paragraph 8 of the Complaint, microDATA lacks
14 information sufficient to form a belief as to the facts alleged, and on that basis, denies them.
15 Answering the second and third sentences of paragraph 8 of the Complaint, such sentences assert a
16 legal conclusion to which no response is required. To the extent an answer is deemed necessary to
17 the second and third sentences of paragraph 8 of the Complaint, microDATA denies the facts
18 alleged.

19 9. Answering the first sentence of paragraph 9 of the Complaint, microDATA lacks
20 information sufficient to form a belief as to the facts alleged, and on that basis, denies them.
21 Further answering, however, microDATA states that it began using the mark MICRODATA 911
22 long before January, 2007. Further answering, microDATA denies that it was using the mark to
23 identify computer goods and services "very similar" to those sold by Plaintiff. microDATA denies
24 the allegations in the second sentence of paragraph 9.

25 10. Answering paragraph 10 of the Complaint, microDATA lacks information
26 sufficient to form a belief as to the facts alleged, and on that basis, denies them.

27 ///

28 ///

FIRST COUNT
(Trademark Infringement)

11. Answering paragraph 11 of the Complaint, microDATA denies that it has operated its business using the MICRODATA 911 mark for the sale of goods and services related to computer software for public safety because this characterization of microDATA's business and use of the cited mark is overly broad and vague. Further answering, microDATA denies that it has used the mark only "since about October, 2006."

12. microDATA denies the allegations of the first sentence of paragraph 12. As to the second sentence of paragraph 12, microDATA admits that it has used the mark MICRODATA 911 in its advertising and promotion, but denies the remainder of the sentence.

13. microDATA denies the allegations of paragraph 13.

14. microDATA denies the allegations of paragraph 14.

15. microDATA denies the allegations of paragraph 15.

16. microDATA denies the allegations of paragraph 16.

SECOND COUNT
(False Designation of Origin; §43(a) of the Lanham Act)

17. microDATA denies the allegations of paragraph 17.

18. microDATA admits only that Plaintiff has no control over the nature and quality of the line of products manufactured and sold by microDATA, as alleged in paragraph 18. Otherwise, the allegations of paragraph 18 are denied.

19. microDATA denies the allegations of paragraph 19.

THIRD COUNT
(Cybersquatting)

20. microDATA admits only that it has registered and used the domain name MICRODATA 911, as alleged in paragraph 20. Otherwise, the allegations of paragraph 20 are denied.

21. microDATA denies the allegations of paragraph 21.

22. microDATA denies the allegations of paragraph 22.

23. microDATA denies the allegations of paragraph 23.

THIRD COUNT (sic)

(Unfair Competition)

24. microDATA denies the allegations of paragraph 24. Further answering, microDATA states that it does not use Plaintiff's trademark.

25. microDATA denies the allegations of paragraph 25.

26. microDATA denies the allegations of paragraph 26.

27. microDATA denies the allegations of paragraph 27.

28. microDATA denies the allegations of paragraph 28.

AFFIRMATIVE DEFENSES

microDATA hereby asserts the following Affirmative Defenses in this case:

A. Lack of personal jurisdiction over the Defendant microDATA.

B. Failure to state a claim upon which relief can be granted.

C. Hubb's claims fail because for a variety of reasons there is no likelihood of confusion.

D. If there is any likelihood of confusion, microDATA has senior common law rights with respect to its marks and Hubb's use of its marks are infringing on microDATA's rights.

E. Hubb's claims are barred by the doctrine of laches.

F. Hubb's claims are barred by the doctrine of waiver.

G. Hubb's claims are barred by the doctrine of estoppel.

H. Hubb's claims are barred by the doctrine of unclean hands.

I. By way of further affirmative defenses, microDATA incorporates by reference the claims set forth in its Counterclaims against Hubb, below.

J. microDATA reserves the right to add further affirmative defenses.

MICRODATA'S COUNTERCLAIMS AGAINST HUBB SYSTEMS

Plaintiff-in-Counterclaim microDATA, for its counterclaims against Defendant-in-Counterclaim Hubb, alleges as follows:

1 MICRODATA, MICRODATA 911, and MICRO911DATA and design. microDATA has been
2 selling products and services under the MICRODATA mark since at least 1990 and under the
3 MICRODATA 911 and MICRO911DATA and design mark, or slight variations of such design
4 mark, since at least 1998.

5 3. Defendant-in-Counterclaim Hubb is, upon information and belief, a California
6 limited liability company, with its principal place of business at 2021 Challenger Drive, Alameda,
7 California, 94501. Hubb is a ruggedized hardware and/or CAD company engaged in designing
8 and selling mobile PC hardware and related services for emergency vehicles. Hubb sells its
9 products under the mark "Data911." Hubb also has a federal registration for its "Data911" mark,
10 Registration No. 2,546,009, for "computer software, namely for use in providing public and
11 personal information in the field of public safety, and instruction manuals sold as a unit
12 therewith."

13 JURISDICTION AND VENUE

14 4. This Court has subject matter jurisdiction over this action pursuant to: 28 U.S.C.
15 §§ 2201 (declaratory judgment), 1331 (federal question), 1338 (trademarks), and 15 U.S.C. §
16 1121 (trademarks), as well as 28 U.S.C. § 1332 (diversity of citizenship). The claim arises under
17 the trademark laws of the United States, and the parties are citizens of different states and the
18 amount in controversy is greater than \$75,000.

19 5. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) and (c) because a
20 substantial part of the events or omissions giving rise to this claim occurred, or a substantial part of
21 property that is the subject of the action is situated here.

22 FACTS

23 6. microDATA has been in business since at least 1983 in St. Johnsbury, Vermont.

24 7. microDATA has been using the mark MICRODATA in Vermont and elsewhere
25 since at least 1990 and has been using the marks MICRODATA 911 and/or MICRO911DATA
26 and design, or slight variations of such design mark, in Vermont and elsewhere since at least 1998.

27 8. microDATA uses its mark in connection with software products and related
28 services as described above.

1 9. microDATA does not design, manufacture, or sell hardware products identified by
2 the microDATA marks.

3 10. Hubb uses the mark "Data911" in connection with hardware and certain software
4 products designed to be used with that hardware.

5 11. microDATA's marks and Hubb's mark are distinct in both visual appearance and in
6 sound when read aloud.

7 12. The marks are also distinct in connotative meaning.

8 13. The goods and services sold by microDATA and Hubb, on which their respective
9 marks are used, are distinct.

10 14. The goods and services sold by microDATA and Hubb are not retail consumer
11 goods, but are relatively expensive, specialized goods and services purchased by highly
12 sophisticated, discriminating purchasers (governmental organizations, municipalities, and both
13 public and private public safety organizations such as police departments, fire departments, and
14 ambulance and EMT services). The purchases are likely to be made only after considerable
15 thought, review, and deliberation, and often as the result of bidding processes. Purchasers will
16 examine the goods and services carefully; may test them before making the purchase; and will
17 understand the differences between the two sources identified by the two marks. There is no
18 likelihood of confusion given the category of potential purchasers of microDATA's and Hubb's
19 respective goods and services.

20 15. In addition, Hubb's mark, "Data911" is a combination of two commonly-used
21 terms. The two elements of Hubb's mark are, both separately and in combination, merely
22 descriptive, if not generic.

23 16. Hubb's mark is merely one of many marks using "data" that consumers may
24 encounter in the field of computer hardware and software and related services, and one of many
25 using "911" that consumers may encounter in the field of public safety-related goods and services.

26 17. Hubb's mark is therefore weak and has a limited capacity to serve as a source-
27 identifier. The mark is therefore entitled to limited if any protection under the trademark laws.

28 18. There is no likelihood of confusion between the two marks.

1 34. Hubb's false designation of origin will continue unless enjoined by this Court.

2 **COUNT IV**
3 **(Unfair Competition)**

4 35. microDATA incorporates by reference paragraphs 1 through 34, above, as if fully
5 set forth herein.

6 36. If the Court finds that the marks are confusingly similar, then, given microDATA's
7 senior common law user rights, Hubb's use of microDATA's mark, or any colorable imitation of
8 it, by Hubb is likely to cause mistake, or to confuse or deceive the general public.

9 37. If the Court finds that the marks are confusingly similar, then the use of the name
10 "Data911" by Hubb constitutes a knowing and willful passing off of the services of Hubb for those
11 of microDATA.

12 38. If the Court finds that the marks are confusingly similar, the actions of Hubb
13 constitute unfair competition with microDATA in the trade by reason of Hubb's use of a mark
14 confusingly similar to microDATA's trademark.

15 39. If the Court finds that the marks are confusingly similar, these acts of unfair
16 competition by Hubb have caused and are continuing to cause irreparable harm to the reputation
17 that microDATA has established over several decades.

18 40. If the Court finds that the marks are confusingly similar, then unless the use of
19 microDATA's trademark by Hubb is restrained, Hubb will continue these acts to the detriment of
20 microDATA.

21 **Request for Relief**

22 WHEREFORE, microDATA requests the Court to provide the following relief:

- 23 A. Dismiss Hubb's claims against microDATA;
24 B. Find that Hubb's actions constitute trademark infringement, false designation of
25 origin, and/or unfair competition against microDATA;
26 C. Award damages to microDATA;
27 D. Enjoin Hubb from further acts of infringement, false designation of origin, and/or
28 unfair competition;

1 E. Award microDATA its attorneys fees and costs of this action; and

2 F. Award microDATA such other and further relief as is just and equitable.

3 MICRODATA DEMANDS A TRIAL BY JURY ON ALL ISSUES SO TRIABLE.

4 Dated: August 10, 2007

TERRA LAW LLP

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6 By: /s/ Mark W. Good
7 Mark W. Good (Cal. State Bar No. 218809)
8 Attorneys for microDATA GIS, Inc.
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